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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 DESERT PALACE, INC., d/b/a
11 CAESARS PALACE,

12 Plaintiff,

13 v.

14 DANIEL KHATCHATURIAN,

15 Defendant.

Case No. 2:12-CV-00247-KJD-GWF

ORDER

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17 Before the Court is the Motion to Dismiss (#6) of Defendant Daniel Khatchaturian. Plaintiff
18 Desert Palace, Inc., d/b/a Caesars Palace (“Caesars”) filed an Opposition (#9) and Defendant filed a
19 Reply (#13).

20 **I. Background**

21 Caesars alleges that the Defendant, Daniel Khatchaturian, used a casino credit line from
22 Caesars to obtain \$500,000 in gaming chips. According to the Complaint (#1) “prior to April 3,
23 2009,” Defendant executed a Signature/ID card with Caesars as part of obtaining a line of credit from
24 the casino. Caesars then granted Defendant credit privileges that allowed him to execute and deliver
25 credit instruments to Caesars up to certain approved monetary limits. In both the Complaint and
26 Caesars’ Opposition to the Motion to Dismiss (#9), Caesars consistently maintains that Defendant

1 accessed his casino credit “on or about April 3, 2009” and failed to sign the credit instrument that
2 was printed at the end of his play that same day.

3 Defendant attached several exhibits to the his Reply (#13) to Caesars’ Opposition.
4 Defendant’s attorney, Gevik Baghdassarian, avers that a representative of Caesars sent him these
5 exhibits. The first exhibit is a signature card signed by Defendant. The second is a copy of the
6 unsigned credit instrument dated April 3, 2009. The third exhibit is a DVD containing surveillance
7 videos dated March 21, 2009 which allegedly show Defendant engaged in the activity which is the
8 subject of the Complaint.

9 Defendant argues that the Complaint is defective because the surveillance video shows the
10 Defendant playing blackjack, not craps and is dated March 21, 2009, not April 3, 2009. According to
11 Defendant, Caesars could not have presented him with the credit instrument which Caesars provided
12 to his counsel, because it bears the date of April 3, 2009, 13 days after the visit to the casino which is
13 shown in the surveillance video.

14 In an attempt to rehabilitate at least one of the deficiencies in its Complaint, Caesars’ counsel
15 wrote a letter to the Court on April 20, 2011, claiming that Caesars’ counsel made a mistake in
16 alleging that Defendant was playing craps. Instead of filing a motion for leave to amend, Caesars’
17 counsel filed an affidavit (#18) from an employee of Caesars asserting that the surveillance video
18 presented by Defendant in his Reply is a true copy of the surveillance video of the incident involving
19 the Defendant and affirming that Defendant was playing blackjack, not craps. Caesars’ counsel did
20 not address the glaring discrepancy between the date of the video and the date alleged in the
21 Complaint and recorded on the unsigned credit instrument.

22 Defendant argues that the Court should grant the Motion to Dismiss based, in part on the
23 video evidence attached to his Reply. Defendant asserts that the video is incorporated into the
24 Complaint by reference because Caesars’ “claims depend upon the video’s content.” Although the
25 Federal Rules permit incorporation of “written instruments,” Defendant cites no authority suggesting
26 that a video submitted by a defendant can be incorporated into a plaintiff’s complaint. See, e.g.,

1 Bowens v. Aftermath Entertainment, 254 F.Supp.2d 629, 639 (E.D.Mich. 2003) (declining to
2 incorporate video evidence submitted by defendant into complaint).

3 Since the video is plainly not part of the pleadings, the Court cannot consider the video
4 without converting Defendant's Motion to Dismiss into a motion for summary judgment as required
5 by Fed. R. Civ. P 12(d). However, the Court is not inclined to rule on a motion for summary
6 judgment when Caesars itself has acknowledged that its Complaint is factually incorrect in
7 describing Defendant's activities and there appears to be a major discrepancy about when those
8 activities occurred.

9 Accordingly, the Court directs Caesars to file an amended complaint on or before July 6,
10 2012. The amended complaint must comply in every respect with the Federal Rules, including Rule
11 11(b)'s requirement that every pleading be based on knowledge, information, and belief formed after
12 reasonable inquiry. Defendant may then re-file his Motion to Dismiss or a motion for summary
13 judgment.

14 III. Conclusion

15 **IT IS HEREBY ORDERED THAT** Plaintiff Caesars will file an amended complaint which
16 complies in every respect with the Federal Rules of Civil Procedure on or before July 6, 2012.

17 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (#6) is **DENIED** as
18 moot.

19 DATED this 22nd day of June 2012.

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23 Kent J. Dawson
United States District Judge
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